Supreme Court, U.S.
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No. 05-1001

IN THE

Supreme Court of the United States

LAWRENCE R. HAZELWOOD,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI
With Appendix

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QUESTIONS PRESENTED FOR REVIEW

Petitioner's attorney violated Petitioner's right to loyalty, conflict-free representation, and attorney client privilege when, with no justifying exception, he filed his self-serving letters with the Court. The District Court compounded and assured the violation of Petitioner's rights, USCA V, IV, VI, when it read and concealed the submission, then took no remedial action, either recusal or inquiry as to service of Petitioner or the government. Based on information contained in the submission, the Court ordered the government to brief inevitable discovery, and, in denying Petitioner's Motion under 28 USC §2255 denied this plainly documented fact. Having concealed and used the extrajudicial information to Petitioner's disadvantage throughout the proceedings, the court injected a pervasive bias, prejudice, unfair advantage to the government that completely undermined the trial mechanism and eliminated any semblance of fairness or impartiality.

The questions presented are:

1. Did the Ninth Circuit's denial of a Certificate of Apppealability rather than giving merits consideration to the plainly substantial question of the denial of habeas corpus without hearing by the same judge who had read and concealed a secret submission of attorney client privileged and work-product documents sanction a departure so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power?

2. Did the Ninth Circuit Err in Denying the Petitioner Release under the Extraordinary facts of this case?

3. Did Petitioner's attorney, James L. Waltz, commit prejudicial error when he submitted his entire file of privileged attorney client correspondence, nearly all of which was written by the attorney, to the District Court?

4. Did the District Court order briefing on inevitable discovery in its order to suppress illegally seized business records, consequently admitting thousands

of pages of those records, because it was suggested by Petitioner's counsel?

5. Was the Court's suggestion of an alternative theory upon which to admit illegally seized business records and order of its briefing rendered unappealable as to its judicially imposed nature when Petitioner's fourth attorney failed to adequately preserve an objection?

RULE 14.1 STATEMENT

This statement is omitted as the names of all parties appear in the caption

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PETITION FOR A WRIT OF CERTIORARI

Lawrence R. Hazlewood, respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Ninth Federal Circuit in this case.

STATEMENT OF JURISDICTION

The District Court had jurisdiction under 18 U.S.C. § 1341 and 26 U.S.C. § 7206.

The Court of Appeals entered its judgment on October 7, 2005. On December 27, 2005, an Application for Extension of Time until February 4, 2006 was granted by Hon. Justice Sandra Day O'Conner. This *Petition for Writ of Certiorari* is timely if filed by February 4, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

OPINIONS BELOW

The opinion below in the Court of Appeals for the Ninth Federal Circuit on direct appeal is unreported and attached as Appendix A. The denial without prejudice of Petitioner's Motion for Release to the Ninth Circuit is attached as Appendix B. The Judgments of the District Court, denial of the §2255 motion and denial of Certificate of Appealability are attached as Appendix C.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

USCA IV
USCA V
USCA VI
18 USC §1341
26 USC § 7206
28 USC § 455
28 USC § 2255
Supreme Court Rule 10(a).

F.R.Crim.Proc. 41(e)[predecessor to 41(g)]
Jencks Act
Ca. Bus. and Prof. Code, § 6068(e)(1)
Ca. Code of Professional Conduct, Rule 3-100(A).
ABA Standards
LCR 12 1.2

STATEMENT OF THE CASE

The issue is whether the constitution of Petitioner's trial mechanism, his due process rights, right to be free from warrant-less seizure, and rights to counsel and to confront witnesses trial, were eviscerated when his attorney, without justification, submitted his entire file of his own self-serving letters to Petitioner to the District Court, who read it, concealed it, and used the information therein to Petitioner's disadvantage. Having concealed this transaction, the Court had no option but to maintain that secrecy because he now had a personal stake in avoiding scrutiny. To assure conviction, the District Court, *inter alia*, a) ordered briefing on inevitable discovery to introduce illegally seized evidence; b) prevented the petitioner from recalling the government's key witness; c) refused to order the government to provide even a copy of the illegally seized evidence during petitioner's pro se trial, and d) misrepresented documented facts in his denial of Petitioner's Motion under 28 USC § 2255 without hearing.

The Motion under 28 USC § 2255 [MHC] was denied on October 18, 2004, [App C] The court's alacrity in denying relief on issues of this magnitude without evidentiary hearing caught Petitioner off guard, and the false assertions contained therein demonstrated the pervasive bias that stemmed from the Waltz submission. On February 3, 2005, petitioner filed a Motion for a Certificate of Appealability [MCA] and Requested to Supplement the record with additional trial records. The Motion was limited to

one issue: the submission by James L. Waltz and the consequent concealment by and prejudice of the District Court. The Ninth Circuit Ordered the complete trial record to be sent from the District Court, making it part of the § 2255 record. The Motion for a Certificate of Appealability made additional citations to that record to further develop the issues that were squarely presented to the District Court. No opposition was filed. On March 16, 2005, Petitioner filed a Motion for Release at the Ninth Circuit which was opposed and denied without prejudice pending the decision on the Certificate of Appealability on April 8, 2005. [App. B] On June 19, 2005 Petitioner filed a supplemental brief through new counsel. On October 7, 2005, the Ninth Circuit denied all Motions. [App. A]

REASONS FOR GRANTING THE PETITION

A. The denial of a Certificate of Appealability by the court below sanctioned a departure by the District Court so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. The District Court read and concealed a secret submission of attorney client privileged and work-product documents, continued to preside in the matter through denial of habeas corpus without hearing, because the court's own involvement created a personal interest in avoiding scrutiny.

B. The constitution of the trial mechanism and Petitioner's due process, and Fourth and Sixth Amendment rights were violated when the Court used the wrongfully submitted attorney-client privileged and work-product information contained therein to:

a) order briefing on the inapplicable doctrine of inevitable discovery, in violation of separation of powers to introduce illegally seized evidence;